

Appendix A

Excerpts from United States Constitution

Article I, Section 8

The Congress shall have power * * *

[cl. 3] To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes;

[cl. 7] To establish Post Offices and post Roads;

[cl. 12]. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[cl. 13] To provide and maintain a Navy;

[cl. 16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers and the Authority of training the Militia according to the discipline prescribed by Congress;

[cl. 17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

[cl. 18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing

Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article III, Section 2

[cl. 1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—*between a State and Citizens of another State*; between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Article IV, Section 3

[cl. 2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Article VI

[cl. 2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Au-

thority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment 14, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix B

Federal Statutes

Armed Services Procurement

10 U.S.C. 2301 (70 A Stat. 641-677)

§ 2301. Declaration of policy

It is the policy of Congress that a fair proportion of the purchases and contracts made under this chapter be placed with small business concerns.

10 U.S.C. 2302

§ 2302. Definitions

In this chapter—

(1) "Head of an agency" means the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air Force; the Secretary of the Treasury; or the Executive Secretary of the National Advisory Committee for Aeronautics.

(2) "Negotiate" means make without formal advertising.

(3) "Formal advertising" means advertising as prescribed by section 2305(a) and (b) of this title.

10 U.S.C. 2303

§ 2303. Applicability of chapter

(a) This chapter applies to the purchase, and contract to purchase, by any of the following agencies, for its use or otherwise, of all property named in subsection (b),

and all services, for which payment is to be made from appropriated funds:

- (1) The Department of the Army.
 - (2) The Department of the Navy.
 - (3) The Departmenet of the Air Force.
 - (4) The Coast Guard.
 - (5) The National Advisory Committee for Aeronautics.
- • • • • • •

10 U.S.C. 2304 .

§ 2304. Purchases and contracts: formal advertising; exceptions

(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising. However, the head of an agency may negotiate such a purchase or contract, if—

(1) it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President;

(2) the public exigency will not permit the delay incident to advertising;

• • • • • • •

(10) the purchase or contract is for property or services for which it is impracticable to obtain competition;

• • • • • • •

(17) negotiation of the purchase or contract is otherwise authorized by law.

10 U.S.C. 2308

§ 2308. Assignment and delegation of procurement functions and responsibilities

Subject to section 2311 of this title, to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—

(1) the head of an agency may, within his agency, delegate functions and assign responsibilities relating to procurement;

(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

10 U.S.C. 2311

§ 2311. Delegation

The head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter except the power to make determinations and decisions under clauses (11)-(16) of section 2304(a), or section 2307(a) of this title. However, the power to make a determination or decision under section 2304(a) (11) of this title may be delegated only to a chief officer or official of that agency who is responsible for

procurement, and only for contracts requiring the expenditure of not more than \$25,000.

10 U.S.C. 9742

§ 9742. Control of transportation systems in time of war

In time of war, the President, through the Secretary of the Air Force, may take possession and assume control of all or part of any system of transportation to transport troops, war material, and equipment, or for other purposes related to the emergency. So far as necessary, he may use the system to the exclusion of other traffic.

Miscellaneous

28 U.S.C., Sec. 1257(2) (62 Stat. 929)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: • • •

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity • • •

28 U.S.C. Sec. 1342 (62 Stat. 932)

The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where:

(1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and,

(2) The order does not interfere with interstate commerce; and,

(3) The order has been made after reasonable notice and hearing; and,

(4) A plain, speedy and efficient remedy may be had in the courts of such State.

28 U.S.C. 1346 (62 Stat. 933)

(a) The district courts shall have original jurisdiction concurrent with the Court of Claims, of:

* * *

(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. * * *

28 U.S.C. 1491 (62 Stat. 940)

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United

States, or for liquidated or unliquidated damages in cases not sounding in tort.

Nothing herein shall be construed to give the Court of Claims jurisdiction in suits against, or founded on actions of, the Tennessee Valley Authority, nor to amend or modify the provisions of the Tennessee Valley Authority Act of 1933, as amended, with respect to suits by or against the Authority. * * *

28 U.S.C. Sec. 2201 (68 Stat. 890)

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States and the District Court for the Territory of Alaska, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

49 U.S.C. 65 (54 Stat. 954)

(a) . Notwithstanding any other provision of law, but subject to the provisions of sections 1(7) and 22 of this title, the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to chapters 1, 8, 12, and 13 of this title of any persons or property for the United States, or on its behalf, . . . *Provided further*, That section 5 of Title 41, shall not after September 18, 1940, be construed as requiring advertising for bids in connection with the procurement of transportation services when the services required

can be procured from any common carrier lawfully operating in the territory where such services are to be performed.

49 U.S.C. Sec. 22 (58 Stat. 751)

(1) Nothing in this chapter shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State or municipal governments * * *

(2) All quotations or tenders of rates, fares or charges under paragraph (1) of this section for the transportation, storage, or handling of property or the transportation of persons free or at reduced rates for the United States Government, or any agency or department thereof, including quotations or tenders for retroactive application whether negotiated or renegotiated after the services have been performed, shall be in writing or confirmed in writing and a copy or copies thereof shall be submitted to the Commission by the carrier or carriers offering such tenders or quotations in the manner specified by the Commission and only upon the submittal of such a quotation or tender made pursuant to an agreement approved by the Commission under section 5a of this Act shall the provisions of paragraph (9) of said section 5a apply, but said provisions shall continue to apply as to any agreement so approved by the Commission under which any such quotation or tender (a) was made prior to the effective date of this paragraph or (b) is hereafter made and for security reasons, as hereinafter provided, is not submitted to the Commission: *Provided*, That nothing in this paragraph shall affect any liability or cause of ac-

tion which may have accrued prior to the date on which this paragraph takes effect. Submittal of such quotations or tenders to the Commission shall be made concurrently with submittal to the United States Government, or any agency or department thereof, for whose account the quotations or tenders are offered or for whom the proposed services are to be rendered. Such quotations or tenders shall be preserved by the Commission for public inspection. The provisions of this paragraph requiring submissions to the Commission shall not apply to any quotation or tender which, as indicated by the United States Government, or any agency or department thereof, to any carrier or carriers, involves information the disclosure of which would endanger the national security.

41 U.S.C. Sec. 5 (60 Stat. 809)

Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed \$500, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 1638 of Appendix to Title 50, (2) when otherwise authorized by

law, or (3) when the reasonable value involved in any one case does not exceed \$500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

In the case of wholly owned Government corporations, this section shall apply to their administrative transactions only.

Federal Property and Administrative Services Act of 1949
(63 Stat. 378, et seq.)

40 U.S.C. Sec. 471

It is the intent of the Congress in enacting this legislation to provide for the Government an economical and efficient system for (a) the procurement and supply of personal property and nonpersonal services, including related functions such as contracting, inspection, storage, issue, specifications, property identification and classification, transportation and traffic management, management of public utility services, repairing and converting, establishment of inventory levels, establishment of forms and procedures, and representation before Federal and State regulatory bodies; (b) the utilization of available property; (c) the disposal of surplus property; and (d) records management.

40 U.S.C. Sec. 472

As used in this Act.——

(a) The term "executive agency" means any executive department or independent establishment in the executive branch of the Government including any wholly owned Government corporation.

(b) The term "Federal agency" means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate and the House of Representatives).

(c) The term "Administrator" means the Administrator of General Services provided for in title I hereof.

5 U.S.C. Sec. 630

(a) There is hereby established an agency in the executive branch of the Government which shall be known as the General Services Administration.

(b) There shall be at the head of the General Services Administration an Administrator of the General Services who shall be appointed by the President by and with the advice and consent of the Senate, and perform his functions subject to the direction and control of the President.

40 U.S.C. Sec. 481

(a) The Administrator shall, in respect of executive agencies, and to the extent that he determines that so doing is advantageous to the Government in terms of economy, efficiency, or service, and with due regard to the program activities of the agencies concerned—

(1) prescribe policies and methods of procurement services, including related functions such as maintenance and supply of personal property and nonprocurement, inspection, storage, issue, property identification and classification, transportation and traffic management, management of public utility services, and repairing and converting; and

(2) operate, and, after consultation with the executive agencies affected, consolidate, take over, or arrange for the operation by any executive agency of warehouses, supply centers, repair shops, fuel yards, and other similar facilities; and

(3) procure and supply personal property and nonpersonal services for the use of executive agencies in the proper discharge of their responsibilities, and perform functions related to procurement and supply such as those mentioned above in subparagraph (1): *Provided*, That contracts for public utility services may be made for periods not exceeding ten years; and

(4) with respect to transportation and other public utility services for the use of executive agencies, represent such agencies in negotiations with carriers and other public utilities and in proceedings involving carriers or other public utilities before Federal and State regulatory bodies;

Provided, That the Secretary of Defense may from time to time, and unless the President shall otherwise direct, exempt the National Military Establishment from action taken or which may be taken by the Administrator under clauses (1), (2), (3), and (4) above whenever he determines such exemption to be in the best interests of national security.

40 U.S.C. Sec. 486

(c) The Administrator shall prescribe such regulations as he deems necessary to effectuate his functions under this Act, and the head of each executive agency

shall cause to be issued such orders and directives as such head deems necessary to carry out such regulations.

• • • • • • •

41 U.S.C. Sec. 251

The purpose of this title is to facilitate the procurement of supplies and services.

41 U.S.C. Sec. 252

(a) The provisions of this title shall be applicable to purchases and contracts for supplies or services made—

(1) by the General Services Administration for the use of such agency or otherwise; and

(2) by any other executive agency (except any agency named in section 2 (a) of the Armed Services Procurement Act of 1947), to the extent of and in conformity with authority delegated by the Administrator pursuant to the provisions of this subsection.

The Administrator may delegate to the head of any other such agency authority to make purchases and contracts for supplies or services pursuant to the provisions of this title (A) for the use of two or more executive agencies or (B) in other cases upon a determination by the Administrator that by reason of circumstances set forth in such determination such delegation is advantageous to the Government in terms of economy, efficiency, or national security. Notice of every such delegation of authority so made shall be furnished to the General Accounting Office.

• • • • • • •

(c) All purchases and contracts for supplies and services shall be made by advertising, as provided in section

303, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed \$1,000: *Provided*, That no agency other than the General Services Administration shall make any purchase of, or contract for, supplies or services in excess of \$500 under this paragraph except in the exercise of authority conferred by the Administrator to procure and furnish supplies and services for the use of two or more executive agencies;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institution;

(6) the supplies or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical supplies;

(8) for supplies purchased for authorized resale;

(9) for supplies or services for which it is impracticable to secure competition;

(10) the agency head determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test: *Provided*, That beginning six months after the effective date of this title and at the end of each six-month period thereafter, there shall be furnished to

the Congress a report setting forth the name of each contractor with whom a contract has been entered into pursuant to this paragraph (10) since the date of the last such report, the amount of the contract, and, with due consideration given to the national security, a description of the work required to be performed thereunder;

(11) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(12) for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in special situations or in particular localities in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(13) for supplies or services as to which the agency head determines that bid prices after advertising therefor are not reasonable (either as to all or as to some part of the requirements) or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all or some of the bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder and (B) the negotiated price is the lowest negotiated price offered by any responsible supplier; or

(14) otherwise authorized by law.

40 U.S.C. Sec. 474

(d) Nothing in this Act shall impair or affect any authority of—

(3) any executive agency named in the Armed Services Procurement Act of 1947, and the head thereof, with respect to the administration of said Act;

Rule 18, Revised Rules of Supreme Court of the United States.

Supersedeas on Appeal.

1. Whenever an appellant entitled thereto desires a stay on appeal, he may present for approval to a judge of the court whose decision is sought to be reviewed, or to such court action by that court is required by law, or, subject to paragraph 2 hereof, to a justice of this court, a motion to stay the enforcement of the judgment appealed from, . . .

Administrative Regulations

32 CFR, 1956 Supp.

§ 1.101 *Purpose of subchapter.* This subchapter, issued by the Assistant Secretary of Defense (Supply and Logistics), by direction of the Secretary of Defense, and in coordination with the Secretaries of the Army, Navy, and Air Force, establishes for the Department of Defense uniform policies and procedures relating to the procurement of supplies and services under the authority of the Armed Services Procurement Act of 1947, Public Law 413, 80th

Congress, as amended, 41 U.S.C. 151-161 (hereinafter referred to as "the act"), or under other statutory authorization.

[19 F.R. 3865, June 25, 1954]

§ 1.102 *Applicability of subchapter.* This subchapter shall apply to all purchases and contracts made by the Department of Defense, within or outside the continental United States, for the procurement of supplies or services which obligate appropriated funds (including available contract authorizations), unless otherwise specified herein.

[19 F.R. 7481, Nov. 20, 1954]

§ 1.112-1 *Policy.* In the interest of achieving uniformity in the field of government procurement, certain General Services Administration regulations, developed cooperatively by the Department of Defense and the General Services Administration, are made applicable to the Departments with respect to the procurement of supplies and services as defined in § 1.102. In order to insure compliance with the pertinent provisions of such General Services Administration regulations. Department of Defense application will be as follows:

(a) *General.* All policy and procedural matter of such General Services Administration regulations which is within the scope of this subchapter will be codified herein.

(b) *Interagency purchase assignment responsibility.* The applicable Department of Defense Directives covering the assignments of responsibility for the purchasing of

specific supplies under Interagency Purchase Assignment will be incorporated by reference in this subchapter.

(c) *Mandatory use of Federal Supply Schedule Contracts.* For Department of Defense implementation of Federal Supply Schedules, see § 5.103 of this subchapter. [19 F.R. 3866, June 25, 1954, as amended at 19 F.R. 7481, Nov. 20, 1954]

§ 1.112-2 *Method of incorporation in this subchapter.* General Services Administration regulations which are to be made applicable to the Departments will be incorporated into this subchapter in the manner set forth in § 1.112-1 (a), (b), or (c), prior to any required compliance therewith by the Departments.

§ 1.201-1 *Department.* The term "Department" includes the Department of the Army, the Department of the Navy, and the Department of the Air Force.

§ 1.201-7 *Procurement.* The term "procurement" includes, by way of description and without limitation, purchasing, renting, leasing, or otherwise obtaining supplies or services.

§ 1.300 *Scope of subpart.* This subpart sets forth general policies with respect to (a) methods of procurement, (b) sources of supply (including governmental and foreign sources), (c) types of contracts, (d) specifications, (e) transportation costs, and (f) responsible prospective contractors.

§ 1.301 *Methods of procurement.* It shall be the objective of each Department to use that method of procurement which will be most advantageous to the Government—price, quality, and other factors considered. The two

principal methods of procurement are by means of formal advertising and by means of negotiation. Procurement shall generally be effected by advertising for bids and thereafter awarding a contract to the lowest responsible bidder, all in accordance with the detailed requirements and procedures set forth in Part 2 of this subchapter. Procurement may be effected by negotiation, however, when authorized by and conducted in accordance with the detailed requirements and procedures set forth in Part 3 of this subchapter. Procurement may also be effected, as provided in Parts 4 and 5 of this subchapter, by such means as (a) coordinated procurement or (b) interdepartmental procurement.

§ 1.306-1 *General.* Proper consideration of transportation costs is necessary to insure that procurement is on the basis most advantageous to the Government. Contracting officers shall give consideration to the transportation factors set forth below which may affect such costs.

§ 1.306-4 *Commodity description.* A complete description of the commodity being purchased, including packing and packaging instructions, is necessary not only to enable the supplier to bid or quote properly on the requirement, but also for subsequent freight classification purposes.

§ 1.306-10 *Volume shipments.* Procurements involving volume shipments (as defined in Departmental instructions) shall be referred at the earliest practicable time to the appropriate military traffic management office for a determination of the reasonableness of applicable current rates and, when appropriate, for negotiation of adjusted or modified rates.

§ 1.306-11 *Unusually large or heavy shipments.* Prior to purchasing unusually large, heavy, high, wide, or long items, the appropriate military traffic management office shall be consulted in order that any transportation difficulties may be considered. Additional costs, such as the use or special equipment, excess blocking and bracing material, circuitous routing, etc., incident to these shipments shall also be considered, in conjunction with the freight rate, in determining total transportation costs.

[Amdt. 15, 21 F.R. 6702, Sept. 6, 1956]

§ 1.306-12 *Mode of transportation.* Generally, the military traffic management office is the proper authority to specify the mode and routing of shipments. If urgency in delivery is a factor, the appropriate military traffic management office shall be so informed in order that routing authorities may select the means of transportation consistent with the stated urgency.

§ 3.200 *Scope of subpart.* Subject to the limitations prescribed in Subpart A of this part, and pursuant to the authority of section 2 (c) of the act, procurement may be effected by negotiation and contracts may be entered into as a result of negotiation without formal advertising, under any one of the circumstances set forth in the following sections of this subpart.

§ 3.210-1 *Authorization.* Pursuant to the authority of section 2 (c) (10) of the act, purchases and contracts may be negotiated without formal advertising if:

• • • for supplies or services for which it is impracticable to secure competition.

§ 3.210-2

(j) When the contemplated procurement is for stevedoring, terminal, warehousing, or switching services, and when either the rates are established by law or regulation or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal solicitation of bids;

(k) When the contemplated procurement is for commercial ocean or air transportation, including time charters, space charters and voyage charters over trade routes not covered by common carriers (as to which, negotiation is authorized under the provisions of §§ 3.217 to 3.217-2 and section 321 of Part III of the Interstate Commerce Act of September 18, 1940, 49 U. S. Code 65), and including services for the operation of Government-owned vessels or aircraft;

§ 3.217-1 *Authorization.* Pursuant to the authority of section 2 (c) (17) of the act, purchases and contracts may be negotiated without formal advertising if:

* * * otherwise authorized by law.

§ 3.217-2 *Application.* This authority shall be used only if and to the extent approved for any Department in accordance with procedures prescribed by that Department.

§ 16.501 *Negotiated utility service contract forms.* This section prescribes forms for the negotiated procurement of utility services which, as used herein, includes only electric, gas, water, sewage, and steam services.

§ 16.501-1 *Estimated annual cost \$2,400 or less (DD Form 671).* (a) Utility services shall be procured without a written contract when the supplier's rates are regulated by a Federal, State, or other public regulatory body and when the annual cost of the services to be procured is estimated at the time of initiation of the service to be \$2,400 or less: *Provided*, That such services shall be procured by a written contract whenever—

(1) The supplier requires the execution of a contract or application form;

(2) A connection charge is involved; or

(3) The negotiation and execution of a contract is deemed to be advantageous to the Government.

(b) When utility services are purchased without written contract the citation of procurement authority, and the certification of receipt of service as billed by the supplier, will be accomplished in a simplified manner in accordance with departmental procedures. Rate schedules will not be required with each monthly billing when—

(1) The applicable rate schedule is in the possession of the procuring activity; or

(2) The invoice or billing indicates the total units of service rendered, the rate charged per unit, and the total charge.

(c) When the annual cost of the procurement is \$2,400 or less and no connection charge is involved, but a written contract is required pursuant to paragraph (a) of this section, DD Form 671 (Negotiated Utility Service Contract) (Short Form) shall be used. Additional clauses, not inconsistent with those on the form, may be included in

accordance with departmental procedures. Deviations from the provisions of the form are authorized when necessary in order to comply with State or local laws and regulations.

(d) Procurement of utility services where a connection charge is involved shall be in accordance with departmental procedures.

§ 16.501-2 *Estimated annual cost over \$2,400.* When the estimated annual cost of the services to be procured is over \$2,400, the procurement shall be in accordance with departmental procedures.

§ 212.1 *Purpose.* This part prescribes a revised DD Form 677 (Motor Common Carrier Facilities Questionnaire), to be used by the military departments in securing certain essential information from motor common carriers.

§ 212.2 *Applicability.* This part is applicable to all departments within the Department of Defense.

§ 212.3 *General.* (a) DD Form 677¹ will be used by appropriate central traffic offices of the military departments for obtaining certain information required in routing freight shipments via motor common carriers (excluding household goods carriers) within the Continental United States. It will not ordinarily be used by individual shipping activities.

(b) The revision of DD Form 677¹ is not to be construed as requiring carriers to resubmit information which is now in the files of the military departments.

¹Filed as part of original document.

44 CFR, 1956 Supp.

§ 53.6. *Public utility services.* (a) Executive agencies, including wholly owned Government corporations and except as provided in paragraph (c) of this section, shall procure needed public utility services within the United States and its territories and possessions under applicable area-wide contracts therefor made by the General Services Administration from time to time. (Further information concerning such contracts may be obtained from the General Services Administration, Public Utilities Branch, Washington, D. C.)

(b) Contracts for public utility services within the United States and its territories and possessions entered into, in the absence of area-wide contracts as provided in paragraph (a) of this section, by executive agencies, including wholly owned Government corporations and except as provided in paragraph (c) of this section, shall be subject to such review as may be determined by the General Services Administration.

(c) This section does not apply to: (1) the Federal Bureau of Investigation, the Atomic Energy Commission, the Tennessee Valley Authority and the Central Intelligence Agency, except to the extent these agencies find compliance therewith will not interfere with their programs; and (2) the production, distribution and sale of public utility services by an executive agency.

(d) As used in this section, the term "public utility services" includes, without limitation, all public utility services procurable from a public utility company; such as, light, heat and power by electricity; gas, water and steam;

communications by telephone, telegraph, teletypewriter, cable and radio, and facilities for such services.

§ 53.21 *Routing.* Executive agencies, except the Post Office Department, the Department of Agriculture, the National Military Establishment, and the District of Columbia Government, shall obtain from the Federal Supply Service, Washington, D. C., routing orders to cover the shipment of their supplies consisting of two or more carloads moving under a Government bill of lading within continental United States from one point of origin to one destination, in the absence of an emergency or waiver granted by the Director, Federal Supply Service.

§ 54.25 *Telephone service contract.*

• • • • •

TERMS AND CONDITIONS

This contract is subject to all rates, charges, rules practices (including the practice as established by the contractor and applicable to its other customers for determining charges or credits for fractional parts of a billing month), or requirements which may be lawfully established. * * *

• • • • •

5. *Authority for changes in charges and general changes.* If changes are approved or ordered by any legally constituted authority having jurisdiction, or otherwise lawfully established by the contractor, which affect the charges for exchange service, or any of the terms of an existing contract or of these instructions, the subscriber shall be notified thereof by the contractor promptly in writing, and requested to prepare and forward to the

contractor signed Standard Form No. 40, covering the change involved.

NOTICE

Department of Defense

Office of the Secretary

Exemption of Department from Certain Provisions Under Title II of the Federal Property and Administration Services Act.

1. By virtue of the authority vested in me under Section 201 (a), Title II of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C.A. 481(a)) I have determined it to be in the best interests of national security for the Department of Defense to be exempt from action taken or which may be taken by the Administrator of the General Services Administration under Section 201(a) (1), (3) and (4) of said Act in (a) the prescription of policies and methods of procurement and supply of transportation and traffic management, (b) the performance of functions related to procurement and supply of transportation and traffic management, and (c) *the representation in negotiations with carriers and in proceedings involving carriers before Federal and State regulatory bodies in transportation and traffic management.*

2. The Department of Defense will continue to cooperate with the General Services Administration in transportation and traffic management matters of mutual interest. In those instances in which the General Services Administration and Department of Defense have mutual

interest and common objectives the Department of Defense will continue to act jointly with the General Services Administration.

3. This exemption shall become effective at 12:01 A.M., e.s.t., Oct. 2, 1954.

C. E. Wilson
Secretary of Defense

Appendix C

California Constitution

Article XII, Section 22

The Railroad Commission is continued in existence as the Public Utilities Commission, which shall consist of five members. * * * *

Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission than the rates, fares and charges which are specified in such tariff.

California Public Utilities Code

Section 211(d). "Common carrier" includes . . . (d) Every highway common carrier and every petroleum irregular route carrier operating within this State.

Section 213. "Highway common carrier" means every corporation . . . owning . . . any auto truck . . . used in the business of transportation of property as a common carrier for compensation over any public highway in this State between fixed termini or over a regular route. . . .

Section 215. "Between fixed termini or over a regular route" means the termini or route between or over which any highway common carrier usually or ordinarily oper-

ates any auto truck or other self-propelled vehicle, or any passenger stage corporation usually or ordinarily operates any passenger stage, even though there may be departures from such termini or route, whether such departures be periodic or irregular.

Section 216(a). 'Public utility' includes every common carrier . . . where the service is performed for or the commodity delivered to the public or any portion thereof.

Section 486. Every common carrier shall file with the commission . . . schedules showing the rates . . . for the transportation between termini within this State of persons and property

Section 493. No common carrier . . . shall engage or participate in the transportation of persons or property, between points within this State, until its schedules of rates . . . have been filed

Section 494. No common carrier shall charge, demand, collect, or receive a different compensation for the transportation of persons or property . . . than the applicable rates . . . specified in its schedules filed

Section 1733. Any application for a rehearing made 10 days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before the effective date, or the order shall stand suspended until the application is granted or denied. Any application for a rehearing made within less than 10 days before the effective date of the order as to which a rehearing is sought, and not granted within 20 days, may be taken by the party making the application to be de-

nied, unless the effective date of the order is extended for the period of the pendency of the application.

Section 1756. Within 30 days after the application for a rehearing is denied, or, if the application is granted, then within 30 days after the decision on rehearing, the applicant may apply to the Supreme Court of this State for a writ of certiorari or review for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. The writ shall be made returnable not later than 30 days after the date of issuance, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the Supreme Court, unless for a good reason shown it is continued.

Section 1757. No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of this State. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review except as provided in this article. Such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination.

Section 1761. The pendency of a writ of review shall not of itself stay or suspend the operation of the order or

decision of the commission, but during the pendency of the writ the Supreme Court in the manner provided in this article in its discretion may stay or suspend in whole or in part the operation of the commission's order or decision.

Section 1762. Except as provided in this section, no order staying or suspending an order or decision of the commission shall be made by the Supreme Court except upon five days' notice and after hearing. If the order or decision of the commission is stayed or suspended the order suspending it shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage, but the Supreme Court may grant a temporary stay restraining the operation of the commission order or decision at any time before such hearing and determination of the application for a stay when, in its opinion irreparable loss or damage would result to petitioner unless such temporary stay is granted. Such temporary stay shall remain in force only until the hearing and determination of the application for a stay upon notice. The hearing of such application for a stay shall be given precedence and assigned for hearing at the earliest practicable day after the expiration of the notice.

Section 1763. No temporary stay shall be granted by the Supreme Court unless it clearly appears from specific facts shown by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and hearing had on a

motion for a stay as provided in this article. Every such temporary stay shall be endorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it appears to be irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry not to exceed 10 days as the court may fix unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary stay is granted without notice the matter of the issuance of a stay shall be set down for hearing at the earliest possible time, and when it comes up for hearing the party obtaining the temporary stay shall proceed with the application for a stay and if he does not do so the court shall dissolve the temporary stay.

Section 1764. In case the order or decision of the commission is stayed or a temporary stay granted, the order of the court shall not become effective until a suspending bond is executed and filed with and approved by the court, payable to the people of the State of California and sufficient in amount and security to insure the prompt payment by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the commission and of all money which any person or corporation may be compelled to pay pending the review of the proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission, in case such order or decision is sus-

tained. The court, in case it stays or suspends the order or decision of the commission in any matter affecting rates or classifications, may also in its discretion direct the public utility affected to pay into court from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court prescribes, all sums of money which it collects from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended.

Section 3502. The use of the public highways for the transportation of property for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public.

Section 3511. "Highway Carrier" means every corporation . . . engaged in transportation of property for compensation or hire as a business over any public highway in this State by means of a motor vehicle. . . .

Section 3571. No highway contract carrier or rad highway common carrier shall engage in the business transportation of property . . . without first having tained from the commission a permit

Section 3663. In the event the commission establish minimum rates for . . . highway permit carriers, the ra shall not exceed the current rates of common carriers land

Section 3664. It is unlawful for any highway perm carrier to charge or collect any lesser rate than the mi mum rate or greater rate than the maximum rate esta lished by the commission

Section 3666. If any highway carrier other than common carrier desires to perform any transportation accessorial service at a lesser rate than the minimu established rates, the commission shall, upon finding th the proposed rate is reasonable, authorize the lesser rate

Section 3737. Upon the issuance by the commissi of any decision or order made applicable to a particu class or group of carriers, or to particular commodit transported or areas served, the commission shall ser a copy of the decision or order without charge upon ea carrier affected. Upon the issuance of a permit to oper as a highway carrier, the commission shall serve witho charge upon the carrier a copy of each tariff, decision, order previously issued that is then applicable to the cl or classes of transportation service the carrier intends perform. Each carrier shall observe any tariff, decisio or order applicable to it after service thereof.

Section 3738. In all proceedings instituted by or pending before the commission pursuant to this chapter, the commission may from time to time make such interim, interlocutory, or other orders as it deems advisable. No such order shall operate as a final determination of the proceeding, and the commission may at any time thereafter make such further orders as it deems advisable with respect to the matters considered and determined in the order or to other matters involved in the proceeding.

Section 3739. After the making of an interim, interlocutory, or other order, any party to the proceeding or any stockholder or bondholder or other party pecuniarily interested in the highway carrier affected may file a petition for rehearing, within the time and for the reasons provided in Sections 1731 to 1736, inclusive. The commission may act upon the petition within the time and in the manner provided in Sections 1731 to 1736, inclusive.

Section 3740. Any interim, interlocutory, or other order may be reviewed as provided in Sections 1756 to 1759, inclusive. Upon such review, only that portion of the record in the proceeding considered by the commission and upon which it acted in making the order sought to be reviewed, need be certified to and considered by the Supreme Court.

Section 3942. No carrier shall engage in the business of transportation of property for compensation by motor vehicle over any public highway in any city in this State without having first obtained from the commission a permit authorizing such operation. Any carrier desiring a

permit shall file a petition therefor with the commission. The petition shall be in such form and contain such information as is prescribed by the commission.

Section 4013. It is unlawful for any carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the commission under this article.

Section 5133. Except as provided in Section 5133.5, no household goods carrier shall engage in the business of the transportation of used household goods and personal effects, office, store, and institution furniture and fixtures for compensation, by motor vehicle over any public highway in this State, unless there is in force a permit issued by the commission authorizing such operations.

Section 5192. In the event the commission establishes minimum rates for transportation services by household goods carriers, the rates shall not exceed the current rates of common carriers by land subject to the Public Utilities Act for the transportation of the same kind of property between the same points.

Section 5193. It is unlawful for any household goods carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the commission under this chapter.

Minimum Rate Tariff No. 2, California Public Utilities Commission

Item 20. . . . Radial highway common carriers, highway contract carriers . . . may deviate from the minimum

rates named in this tariff in connection with the transportation of property for the armed forces of the United States

“Item 30. . . . the rates in this tariff apply for transportation of shipments between all points within the State of California. . . .

Items 40 and 41 Series. Rates in this tariff apply for the transportation of all commodities, except the following:

Civil Code

Section 2114. A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. . . .

Section 2169. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.